



03500.013231.2

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
YOSHIFUMI TAKEYAMA ET AL. ) Examiner: M. Elve  
Application No.: 09/840,893 ) Group Art Unit: 1725  
Filed: April 25, 2001 )  
For: NON-CONTACT TREATMENT )  
METHOD : June 8, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT  
TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Sir:

Applicants hereby request under 37 C.F.R. § 1.705(b) reconsideration and recalculation of the Patent Term Adjustment (PTA) for the above-captioned application. Submitted herewith is a check for \$200.00 for the fee set forth in 37 C.F.R. § 1.18(e). Any deficiency in this fee may be charged, or any overpayment credited, to Deposit Account No. 06-1205.

For the following reasons, this application is believed to be entitled to a PTA of 815 days.

1. The subject Application No. 09/840,893 was filed on April 25, 2001.
2. The application is not subject to any terminal disclaimers.

3. The Patent Application Information Retrieval (PAIR) system indicates a U.S. Patent and Trademark Office (PTO) delay period of 386 days for a period from June 26, 2002 to July 16, 2003 for failure to issue an action under 35 U.S.C. § 132 or a Notice of Allowance under 35 U.S.C. § 151 within fourteen months of the filing date of the application. Applicants do not dispute this determination.

4. The PAIR system indicates Applicants' delay period of 515 days in connection with the filing of a response to the non-final Office Action mailed on July 16, 2003. Applicants dispute this determination.

5. The PAIR system indicates a PTO delay of 0 days for mailing the Notice of Allowance on April 20, 2005. Applicants dispute this determination.

### ARGUMENTS

1. It is respectfully submitted that the PTO:

i) incorrectly deemed March 14, 2005 to be the date when the response to the July 16, 2003 non-final Office Action was filed and, consequently, wrongly deducted 515 days from the PTA; and

ii) failed to account for its failure to issue an action under 35 U.S.C. § 132 or a Notice of Allowance under 35 U.S.C. § 151 within four months of October 16, 2003, the date on which the response to the above-mentioned non-final Office Action was filed.

2. Applicants filed a response to the July 16, 2003 non-final Office Action on October 16, 2003. This fact has been conclusively proven by Applicants via submission of a copy of a return receipt postcard for the response bearing the PTO mail room stamp dated

October 16, 2003, as stated in Decisions on Petition issued by the PTO on March 14, 2005 and April 19, 2005.

3. Despite the fact that the response to the July 16, 2003 non-final Office Action was timely filed on October 16, 2003, the PTO issued a Notice of Abandonment on March 15, 2004.

4. Applicants filed a request to withdraw this erroneous holding of abandonment on March 26, 2004, as acknowledged in both of the above-mentioned Decisions on Petition, together with proof of filing of the October 16, 2003 response and a copy of the response. Since this request to withdraw the holding of abandonment was filed within two months of the mailing date of the Notice of Abandonment, there should be no reduction in the PTA.

5. A representative at the Petitions Branch advised Applicants' undersigned attorney on June 29, 2004 that the March 26, 2004 request was not in the official file for the subject application. Applicants' attorney was requested to resubmit all previously-filed documents. This was done on July 1, 2004. The re-submission should not result in any reduction in the PTA, because it was done at the request of PTO personnel.

6. Applicants' undersigned attorney was subsequently advised by the Examiner in charge of the application on or about October 1, 2004 to submit yet another request to withdraw the holding of abandonment to ensure proper processing. As a result, a Petition to Withdraw Holding of Abandonment under 37 C.F.R. § 1.181(a) was filed on October 6, 2004. This should not result in any reduction in the PTA, because it was done at the request of PTO personnel.

7. The PTO issued Decisions on Petition on March 14, 2005 and April 19, 2005, both of which vacated the holding of abandonment.<sup>1</sup>

8. It is clear that the 515 day reduction in the PTA for failure to timely file a response to the July 16, 2003 non-Office Action is incorrect, because the response was filed on October 16, 2003, within three months of the mailing date of the Office Action. There should be no reduction in the PTA associated with the response.

9. There should be a term adjustment in the amount of 429 days to account for the period beginning on the day after the date that is four months after the date that the response to the July 16, 2003 Office Action was filed (i.e., February 17, 2004) and ending on the date the Notice of Allowance was mailed (i.e., April 20, 2005).

10. Applicants again note that the two re-submissions of the request to withdraw the holding of abandonment should not result in any reduction in the PTA, because, as noted above, both were filed at the request of PTO personnel. Applicants should not be penalized for the apparent mishandling of papers by the PTO.

#### RELIEF REQUESTED

Reconsideration of the patent term adjustment is respectfully requested, in which the reduction of 515 days associated with the response to the non-final Office Action

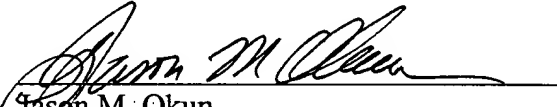
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<sup>1</sup> Applicants note that the Decision on Petition dated April 19, 2005 incorrectly identifies the paper issued by the PTO to which a response was originally required. Specifically, the Decision states that the holding of abandonment for “failure to timely file a proper reply to the Office letter mailed on April 21, 2003 is hereby vacated”(emphasis added). However, the Office letter was mailed on July 16, 2003, not April 21, 2003. April 21, 2003 is the date when this case was transferred to the above-mentioned GAU.

mailed on July 16, 2003 should be adjusted to 0 days and a patent term adjustment of 0 days associated with the issuance of the Notice of Allowance should be changed to 429 days. It is, therefore, requested that the patent term adjustment be recalculated and adjusted to 815 days.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

  
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